Case No. PD-0018-23
In the Court of Criminal Appeals

CONTINENTAL HERITAGE INSURANCE CO., AGENT, PAT KINNARD, D/B/A PAT KINNARD BAIL BONDS
APPELLANT

v.

THE STATE OF TEXAS
APPELLEE

On Discretionary Review from Criminal District Court No.3, Dallas County, Hon. Gracie Lewis, Judge Presiding Trial Court Cause No. F-1818863-J. Direct Appeal in Cause No. 05-20-01005-CV from the Fifth Court of Appeals

STATE'S RESPONSE BRIEF

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ORAL ARGUMENT GRANTED

IDENTITY OF PARTY AND COUNSEL

Appellate Court	Fifth Court of Appeals
Appellate Panel	The Honorable David Schenck The Honorable Leslie Osborne The Honorable Erin Nowell
Trial Court	Criminal District Court No. 3, Dallas County, Texas
Trial Court Judge	The Honorable Gracie Lewis
Appellant	Continental Heritage Ins. Co., Agent, Pat Kinnard, D/B/A Pat Kinnard Bail Bonds

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The Honorable Felicia Pitre

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To the Honorable Court of Criminal Appeals:

The State of Texas submits this brief in response to the brief of Appellant, Continental Heritage Ins. Co., Agent, Pat Kinnard, D/B/A Pat Kinnard Bail Bonds.

STATEMENT OF THE CASE

This is a discretionary review of a holding that states three major points: 1) Art. 103.008 is applicable to a surety as it is for a criminal defendant; 2) Art. 103.008 applies to correct costs in bond forfeiture cases; and 3) the holding in *Ranger* remains good law and civil costs, to include civil filing fees, apply to bond forfeiture cases. *Cont'l Heritage Ins. Co. v. State*, No. 05-20-01005-CV, 2022 WL 17038175 (Tex. App.—Dallas Nov. 2022, pet. granted). The appeal stems from a trial court order denying Appellant's motion to correct costs pursuant to Tex. Code Crim. Proc. Ann. art. 103.008 within an agreed bond forfeiture judgment rendered in favor of the State of Texas. Appellant did not take a direct appeal of the bond forfeiture judgment. Appellant only appealed the trial court's order denying its motion to correct costs in a bid to overturn *Ranger Ins. Co. v. State*, 312 S.W.3d 266 (Tex. App.—Dallas 2010, pet. ref'd, untimely filed), the latest case in a long line of bond forfeiture costs of court cases.

The Dallas County District Clerk assesses civil fees as costs against the principal and sureties. Appellant protests paying the civil fees in bond forfeiture cases. Whereas no one argues the bond forfeiture case is a civil

case, it is no less a separate case that incurs separate costs and fees. The civil rules apply as these cases concern money judgments and not criminal convictions. Tex. Code Crim. Proc. Ann. art. 22.10. The burden of proof is different and the evidence is largely documentary. They are initiated with citations and if not answered per civil rules a default judgment can be taken. Tex. Code Crim. Proc. Ann. art. 22.15. All cases do not end in trials as a summary judgment can be awarded. Discovery and mediation are available and all of the aspects of a civil case apply. For these reasons, so do civil costs of court, which include civil filing fees.

At the heart of this case is whether the civil rules apply in bond forfeiture cases pursuant to art. 22.10, or not; specifically, in challenging costs of court. Although Appellant included a motion to retax costs (pursuant to the civil rules) in its motion to correct costs under art. 103.008, and although briefly mentioned in the trial court hearing, it is clear Appellant relied on art. 103.008. [RR 8]. The back and forth from civil to criminal code provisions, for the convenience of the surety, must be resolved here. Costs of court are defined in the civil rules and include (but are not limited to) filing fees. Tex. R. Civ. P. 145(a). Bond forfeiture case law has long established that civil court costs may be assessed in bond forfeiture cases. *Dees v. State*, 865 S.W.2d 461 (Tex. Crim. App. 1993). The Fifth Court of Appeals discusses this when it states that "it is apparent from the court's decision in *Safety National*, its discussion in *Dees* therein, and reference to trial court fee statutes, that the

court of criminal appeals considered *civil court filing fees* to be part of the "civil court costs." *Cont'l Heritage*, 2022 WL 17038175, at *6-7.

Further, it has been established that art. 103.008 does not apply to correct fees, only costs. And the State further argues that art. 103.008 only applies to costs as assessed by the code of criminal procedure. The distinction between fees and costs may be an issue clearly outlined in criminal cases that have examined art. 103.008 but this distinction is of no matter under the civil rules where filing fees are included as costs. The issue is whether art. 22.10, which states that the civil rules govern bond forfeiture proceedings, matters or if we are making new exceptions after all this time. The State argues that it is settled law, thus, in order to apply art. 103.008 to correct civil filing fees a departure must be made and that just has not been done.

Whether art. 103.008 even applies to correct civil filing fees is not even reached when the question of 'does it apply to a surety in a bond forfeiture case?' is properly answered. Appellant complains that art. 103.008 applies to corporate sureties because they are defendants. Even though a surety may be considered a defendant for criminal code purposes, in order to qualify for appellate rights, the same does not automatically apply to challenging costs of court. The plain language of arts. 44.02 and 44.42 states that only a defendant has the right to appeal. Tex. Code Crim. Proc. Ann. arts. 44.02 & 44.42. Without allowing a surety to be considered a defendant for <u>appellate purposes</u>, the surety would have **no** rights to appeal. However, the surety

has *at least* three other avenues to challenge costs: 1) A motion for new trial in the bond forfeiture case; 2) A motion to retax costs under the civil rules; and 3) Declaratory judgment action as a separate case challenging the civil statutes in civil court. There is no legal or common sense reason to create yet another avenue to challenge costs that have already been long decided unless it is to apply art. 103.008 to the criminal defendant/principal only. And even if that is done it would only be for costs assessed pursuant to the code of criminal procedure.

Art. 103.008 was not litigated in *Kubosh v. Harris County*, 416 S.W.3d 483 (Tex. App. – Houston [1st Dist.] 2013, pet. denied) despite appellant's assertions. [RR 9][Appellant's Brief 10]. However, as pointed out by Appellee at the trial court hearing [RR 12-13], art. 103.008 was not relied upon by Kubosh, et. al, and Harris County was never given the opportunity to object to it. The applicability of art. 103.008 was not briefed by either side nor construed by the court. *See* Appellee's Brief, 2012 WL 8747389 (Tex. App.—Houston [1st Dist.] (Appellate Brief) and Appellant's Brief; *Kubosh v. Harris County*, 416 S.W.3d 483 (Tex. App.—Houston [1st Dist.] 2013, pet. denied)(Appellate Brief)(01-12-00214-CV).[1] The *Kubosh* court did not distinguish between a civil defendant (the bondsman in a bond forfeiture case) and a criminal defendant per the code of criminal procedure. That

[1] Appellee did not attach Appellant's Brief in *Kubosh* as an exhibit due to the length but will make it available by request.

error has been conflated into the *Cont'l Heritage* case as that court failed to construe art. 103.008 as well.

Kubosh did not construe art. 103.008 because Kubosh, et. al, did not file a motion under art. 103.008 triggering its provisions. The Fifth Court of Appeals erred when it looked to the "analysis of our sister court in *Kubosh* and the plain language of the pertinent statutes to be instructive." *See Cont'l Heritage*, 2022 WL 17038175, at *9. There was NO analysis of art. 103.008. The Fifth Court of Appeals' analysis consisted of stating "article 22.10 does not repudiate the application of substantive portions of the code of criminal procedure" without further explanation. *Id.* at 10. The plain language of art. 22.10 does not have to use the word "repudiate" in order to exclude art 103.008, the plain language does that when it states "…except as otherwise provided by this chapter, the proceedings had therein shall be governed by the same rules governing other civil suits." Tex. Code Crim. Proc. Ann. art. 22.10. The court also erred when it looked to a case for part of its holding that was not even the holding of *that* particular case.

The appellate court did not analyze the legal necessity for a surety to be considered a defendant for appellate purposes. It simply agreed with the *Kubosh* line of dicta when it stated that a surety/bondsman is a defendant for art. 103.008 purposes even though several other legal avenues exist to challenge costs (unlike the strict language of arts. 44.02 and 44.42). *Kubosh* never went so far as it failed to construe art. 103.008 when it mentioned it in dicta. *Kubosh*, 416 S.W.3d at 487. That is an error the State seeks to overturn.

Art. 103.008, in its current codification, has been in effect since 1985 and has never been used in bond forfeiture litigation. [CR 131-133, Westlaw Notes on Decisions for art. 103.008] By the clear language of art. 22.10 it does not apply and was not relied upon in *Ranger*, *Safety Nat'l*, or *Dees* or ever because the costs imposed in a bond forfeiture case do not arise out of the criminal code. In a bond forfeiture case the State is the plaintiff and the bondsman a defendant, a civil defendant. Civil defendants do not use criminal code provisions to affect civil costs of court.

The Fifth Court of Appeals was correct when it ruled that the holding in *Ranger* was good law and should be affirmed on that holding.

ISSUES PRESENTED

1. THE COURT OF APPEALS ERRED WHEN IT RULED THAT ART. 103.008 APPLIED TO SURETIES AND BOND FORFEITURE CASES.
2. THE COURT CORRECTLY RULED THAT RANGER WAS STILL GOOD LAW AND CIVIL COSTS APPLIED IN BOND FORFEITURE CASES.

STATEMENT OF FACTS/PROCEDURAL HISTORY

Appellant posted bond for defendant, Darrell S. David in the amount of $10,000.00 under cause number F-1818863-J. Defendant was charged with Unlawful Possession of a Firearm by a Felon. [CR 6]. After failing to

appear in court on or about October 2, 2019, the trial court forfeited the defendant's bond and issued a warrant for the defendant. [CR 8]. The defendant was arrested and released on a new bond in the same case on or about December 12, 2019. The bond forfeiture case was set for final (show cause) hearing in Magistrate Court, October 6, 2020. Appellant, through its agent, settled the case for interest on the bond amount and costs of court. [CR 19]. The Trial Court entered the judgment on October 9, 2020, in the amount of $100.00 as interest on the amount of the bond after forfeiture and $396.00 as costs of court. [CR 25]. Even though Appellant agreed to the judgment, it filed a motion to correct costs [CR 26-102] and the State filed a response and Plea to the Jurisdiction. [CR 107-135] The District Clerk, although not a party to the case or motion, filed an Amicus Brief in support of Appellee's position. [CR 151-152].

The trial court denied the State's Plea and Appellant's motions and entered same on a written order and docket entry on Nov. 6, 2020 and should be considered the true findings. [CR 153, 154] Appellant formally requested Findings [CR 161] Nov. 9, 2020, pursuant to the civil rules, even though it had already sent a document directly to the trial court judge who signed it [CR 155-156], later that day. The State's objection [CR 157-160] was not considered by the trial court as it had already signed Appellant's draft without

providing the prevailing party the opportunity to provide proposed findings. The State discovered the findings uploaded onto OnBase on Nov. 13, 2020 (even though they were signed on Nov. 9, 2020).

An appeal followed. The Fifth Court of Appeals ruled that art. 103.008 was applicable to a bondsman and to a bond forfeiture case but that *Ranger* was still good law and civil costs, to include civil filing fees applied to bond forfeiture cases. *Cont'l Heritage*, 2022 WL 17038175. The appellate court denied a motion for en banc reconsideration. This petition for discretionary review followed.

SUMMARY OF THE ARGUMENT

Chapter 22 mandates costs in bond forfeiture cases. Tex. Code Crim. Proc. Ann. arts. 22.13, 22.14, 22.16 & 22.17. *Dees* clearly holds that civil costs of court are applicable to bond forfeiture cases. *See generally*, *Dees*, 865 S.W.2d 461 (Tex. Crim. App. 1993). "Civil costs of court," besides being a phrase used in judgments, is a larger set of costs that includes among other costs and fees, civil filing fees. *See* Tex. Civ. Prac. & Rem. Code § 31.007(b)(1); Tex. R. Civ. P. 145(a). There is nothing left to argue. Appellant secretly desires to overturn *Dees* because if civil costs apply those costs *include* civil

filing fees. The *Ranger* court should have never entertained a distinction to begin with. Although *Safety Nat'l* made a distinction between appellate costs and costs at the trial court level, it did not conflict with *Dees*. *Safety Nat'l Cas. Corp. v. State*, 305 S.W.3d 586, 590 (Tex. Crim. App. 2010). Simply put, civil costs apply at the trial court level and those costs include civil filing fees.

This case is also about a bondsman attempting to avoid paying its fair share. By failing to bring the defendant to court the bondsman forces the state to sue for a judgment of forfeiture to pay either the full amount of the bond (if the defendant has not been arrested) or interest on the bond amount after forfeiture. Appellant seeks to use a criminal code provision outside of Tex. Code Crim. Proc. Chapter 22, by claiming the Appellant is a criminal defendant for all purposes (or when the situation suits him), to challenge civil fees *not* criminal costs. It is also about whether the civil rules are going to apply to bond forfeiture cases or not. Because so much of the bond forfeiture process is rooted in the civil rules it remains a criminal case in name only. It is about there being a clear definition of "costs" amid the civil rules that has been previously ignored and how fees, filing or otherwise, are not implicated by art. 103.008 which is why it has never been used in the past. At its core it is about the definition of civil costs of court applicable to bond forfeiture cases, *Dees v. State*, 865 S.W.2d 461 (Tex. Crim. App. 1993),

despite the fact that the civil rules define filing fees as costs. Tex. R. Civ. P. 145(a).

Appellant's sole authority for the use of art. 103.008 is the mention of the art. 103.008 in dicta in *Kubosh v. Harris County,* 416 S.W.3d 586 (Tex. App.—Houston [1st Dist.], 2013 pet. denied) which the Fifth Court of Appeals also relied without construing art. 103.008 for itself. Despite Appellant's misleading assertions that "based on *Kubosh*, *Safety Nat'l*, *Dees*, and of course, the Attorney General's opinion …says, you know, 103.008(a) is probably right," [RR 10-11], it is clear upon inspection that only *Kubosh* mentions art. 103.008. To properly construe art. 103.008 the court must: 1) look to the surrounding code sections in Chapter 103 for context; 2) the statutes that give the defendant the right to appeal the bond forfeiture case; 3) why, for appellate purposes, the bondsman may be considered a defendant; 4) the alternate methods for contesting costs assessed in a bond forfeiture judgment that already exist; and 5) why any of those methods cannot be utilized. The court erred when it failed to thoroughly analyze this in light of the plain language of art. 22.10.

Appellant's entire argument for the trial court to retax costs at all is that the controlling case, *Ranger Ins. Co. v. State*, 312 S.W.3d 266 (Tex. App.—Dallas 2010, pet. ref'd, untimely filed) was wrongly decided and the courts

should follow a 2006 Attorney General opinion that the First and Fifth Courts of Appeals rejected along with the Court of Criminal Appeals in *Safety Nat'l* as well. Further that a distinction was not made between civil costs and civil filing fees in which it blamed the Appellant in the *Ranger* case. But a distinction was not needed based on the definition of civil costs within the civil rules.

If this Court were to hold that *Ranger* was wrongly decided (and *Dees* for that matter) and correct costs based on that it would upset more than ten years of solid precedent and create a drastic change in costs not seen before. This Court should find that art. 103.008 does not apply to correct anything other than criminal costs assessed through the code of criminal procedure for a criminal defendant and that *Ranger* was correctly decided. And no matter what the fees or costs are titled, they are incurred because the bondsman, in running a "for profit business", failed to bring the criminal defendant (not himself as the civil defendant) to court. The bondsman is the party that should bear any associated civil costs, filing fees or otherwise, and not the taxpayers because the law says so. Tex. Code Crim. Proc. Ann. arts. 22.13 (b), 22.14, 22.16 & 22.17. Because it is the taxpayers that will bear the costs if the bondsman does not; the law must not allow this.

RESPONSE TO ISSUES PRESENTED

REPLY POINT NO. 1: THE COURT OF APPEALS ERRED WHEN IT RULED ARTICLE 103.008 WAS APPLICABLE IN BOND FORFEITURE CASES.

1.1. SURETY MAY BE CONSIDERED A DEFENDANT FOR APPELLATE PURPOSES ONLY.

A surety may be considered a "defendant" as used in the statute for appellate purposes (Tex. Code Crim. Proc. Ann. art. 44.42) but the same is not the case for art. 103.008. Without an exception to be considered a criminal defendant, a surety would not have a right to appeal a bond forfeiture judgment by the plain language of the statutes pursuant to Arts. 44.02 or 44.42. Tex. Code Crim. Proc. Ann. arts. 44.02 & 44.42. Art. 44.44 further states that the appeal is governed by the civil rules. Tex. Code Crim. Proc. Ann. art. 44.44. For this reason, the State concedes, for appellate purposes, the surety may be considered a defendant but not for the correction of costs through art. 103.008, or any other purpose. Art. 103.008 is a more specific section among a chapter devoted only to the criminal defendant. *See*, Tex. Code Crim. Proc. Chap. 103. It was never meant to be used in that manner and the history of that section proves this. Appellant even admits that there is no law that decides this or can be cited to where

art. 103.008 was utilized by a surety to correct costs of court in a bond forfeiture case. Not once because it should be crystal clear that it only applies to a criminal defendant. One may twist the intent and ignore the rest of Chapter 103 to favor the original error from the *Kubosh* case, but it is not for good jurisprudence and does not stand up to strict analysis.

Allowing the use of this criminal code section would be understandable (but no less palatable) if a surety had *no other* recourse to challenge errors in costs of court. But that is not the case. The surety already has at least two other avenues to challenge costs within the bond forfeiture case itself and one in new litigation: 1) A motion for new trial in the bond forfeiture case; 2) A motion to retax costs under the civil rules; and 3) Declaratory judgment action as a separate civil suit challenging civil statutes in civil court. The application of arts. 44.02 and 44.42 to a surety as a defendant, out of legal necessity, should not be forced upon art. 103.008 when there are other legal options a surety can and has used since *Dees*.

Justices Holcomb and Womack explained it well when they wrote in their dissent of *Safety Nat'l*, that "…a forfeiture … is judicially declared, an ancillary lawsuit, quasi-civil in nature, arises, with the State as the **civil plaintiff** and the defendant and his bondsman as the **civil defendants.**"

Safety Nat'l, 305 S.W.3d at 592 (Holcomb, J., Womack, J., dissenting).[2] Civil defendants cannot use criminal code provisions; thus a bondsman cannot use art. 103.008 to challenge costs in a proceeding governed by the civil rules.

1.2. ARTICLE 103.008 SERVES TO CORRECT COSTS, NOT FEES.

Article 103.008 provides, "On the filing of a motion by a defendant not later than one year after the date of the final disposition of a case in which costs were imposed, the court in which the case is pending or was last pending shall correct any error in the costs." Tex. Code. Crim. Proc. Ann. art. 103.008(a). The statute specifically concerns correcting errors in court costs. *Id.* Accordingly, appellant repeatedly argues over and over that the civil filing fees are not costs; thus, Appellant cannot rely on article 103.008 to challenge them. *See id.* For this reason, among others, this article is not the appropriate way to challenge costs assessed pursuant to art. 22.10 that are identified as fees. Filing fees assessed pursuant to art. 22.10 and the civil rules are not costs to be corrected by art. 103.008. One cannot pick and choose when it wants the criminal rules to apply and when it wants to hide behind the civil rules. Similar to the plain text of art. 22.10, the plain text of

[2] Unlike the concurrence appellant attempts to rely on heavily as binding authority [Pet. Brief 24, 40, 48], more than one Justice joined the dissent.

art. 103.008 is more significant as the Court opined in a similar argument regarding the plain text of art. 103.008. *Lewis v. State*, 427 S.W.3d 500, 502 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd) (holding that attorneys fees are not costs).

1.3. CIVIL FILING FEES ARE NOT CRIMINAL COSTS.

The State would concede that civil filing fees are not criminal costs as interpreted by art. 103.008 but they are civil costs, and they apply to bond forfeiture cases. Because civil filing fees are not criminal costs, a motion pursuant to art. 103.008 cannot be used to correct or challenge them. *Id.* Art. 103.008 serves to correct costs, not fees. The statute specifically concerns correcting errors in court costs. "The plain meaning of a statute is determined by construing the literal text of the statute according to the rules of grammar and common usage and presuming that every word was meant to serve a discrete purpose that should be given effect." *Baird v. State,* 398 S.W.3d 220, 228 (Tex. Crim. App. 2013). Appellant cannot, and the court should not choose when the plain language and literal meaning of the text applies (e.g., art. 22.10) and when it does not apply. Although Appellant has ignored the plain language of *Dees*, art. 103.008, and art. 22.10.

1.4. CIVIL FILING FEES ARE COSTS UNDER THE CIVIL RULES.

Appellant's argument that civil filing fees are not civil costs is without merit. *See* Tex. R. Civ. P. 145(a). Also, in a circular argument, if the filing fees are not costs then they cannot be corrected pursuant to a motion under art. 103.008. *Lewis*, 427 S.W.3d at 502. If they are costs then there is nothing to correct as *Dees*, *Safety Nat'l*, *Ranger*, *Cont'l Heritage*, have already set forth that **civil costs** apply in bond forfeiture cases and Tex. R. Civ. P. 145(a) states that civil filing fees are civil costs. The issue is that art. 103.008 was designed for costs in a criminal case challenged by a criminal defendant. The distinction between costs and fees disappears once the civil rules are applied through art. 22.10. Art. 103.008 only applies to criminal costs imposed through the code of criminal procedure. Costs in bond forfeiture cases do not arise out of the criminal code but via civil rules and civil statutes and are applied to the bond forfeiture case through art. 22.10.

Art. 22.10 states clearly and unequivocally that civil rules govern bond forfeiture cases and costs are defined by the civil rules. Pursuant to Tex. R. Civ. P. 145, costs are defined as "any fee charged by the court or an officer of the court, including, but not limited to, **filing fees,** …" Tex. R. Civ. P. 145(a) (emphasis added). Appellant, a civil defendant in a bond forfeiture

case, cannot use a criminal code section to challenge the civil rules or civil statutes. It must use civil rules to do that. Although it may do so in the bond forfeiture case it must use a motion to retax costs or motion for new trial and direct appeal. However, to utilize art. 103.008 in any capacity, the court must find that **civil filing fees are criminal costs as defined by art. 103.008.** That cannot be the case as the fees complained of are set by civil statutes and defined as civil costs by the civil rules. The Court need look no further as *Dees* has already held that civil costs are applicable to bondsmen in bond forfeiture cases and filing fees are civil costs. *Dees v. State*, 865 S.W.2d 461 (Tex. Crim. App. 1993); Tex. R. Civ. P. 145 (a).

Justice Meyers held steady in the concurrence in *Safety Nat'l* that "only the Rules of Civil Procedure apply to a bond forfeiture case … and the Rules … do not impose filing fees" and the authority for civil filing fees arises from civil statutes. *Safety Nat'l*, 305 S.W.3d at 592 (Meyers, J., concurring). The concurrence failed to examine Tex. R. Civ. P. 145(a) which actually defines filing fees as costs. *Id.* This revelation strikes a dagger into the heart of Appellant's argument as it has cited over and over in heavy reliance. [Pet. Brief 24, 40, 48]. Once again, if the civil rules are to apply then the question has been resolved and civil filing fees are civil costs of court. Regardless of

what rules will apply, civil filing fees will always be considered civil costs of court.[3] "Civil costs" is a set that contains "civil filing fees" as a member.

The Fifth Court of Appeals erred when it ruled that art. 103.008 applied to bondsmen or bills of costs assessed pursuant to art. 22.10 in a bond forfeiture case. That ruling along with the *Kubosh* case are in direct conflict with *Lewis v. State*, 427 S.W.3d 500 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd). According to the criminal code, fees are not costs and art. 103.008 cannot be used to correct fees. Further, the costs appellant seeks to correct are the civil filing *fees* set forth by civil statutes applied to bond forfeiture cases through the civil rules and art. 22.10.

1.5. COSTS V. FEES IS A WASTED ARGUMENT.

Because filing fees are included in what is defined as costs under the civil rules, attempting to distinguish them resolves nothing other than asking a criminal court to strike down or redefine a civil rule. *See* Tex. R. Civ. P. 145(a). If the court finds that civil filing fees are not costs then art. 103.008 does not apply and we must use current case law and civil rules to determine costs and that puts us back to square one, the correct square. If the court finds that civil filing fees are costs pursuant to Tex. R. Civ. P. 145(a), *Safety*

[3] In civil court, when costs are awarded, the prevailing party gets its filing fees back. Most of the time the only costs a prevailing party can successfully prove are its filing fees.

Nat'l, *Ranger* and now *Cont'l Heritage*, then this issue is decided. *Dees* has already held that civil costs are applicable to bondsmen in bond forfeiture cases. *Dees v. State*, 865 S.W.2d 461 (Tex. Crim. App. 1993). It can only be resolved in the surety's favor if the actual statutes that authorize those fees are attacked individually. *Ranger* did not need to distinguish between costs and fees (nor *Dees* for that matter) because it made no sense to do that under the civil rules where filing fees are included in costs. *See*, *Ranger Ins. Co. v. State*, 312 S.W.3d 266 (Tex. App.—Dallas 2010, pet. ref'd, untimely filed). Whether this was articulated by the *Ranger* court makes no legal difference.

There may be a distinction between costs and fees under the code of criminal procedure but under the civil rules, which apply in bond forfeiture cases, filing fees are included in costs. *See* Tex. R. Civ. P. 145(a). And even if the Clerk does not collect filing fees upon the filing of the judgment nisi, the court is expressly authorized to include any "fees due" as part of the costs in the judgment. Tex. Civ. Prac. & Rem Code § 31.007(b)(1) (emphasis added). Once again proving that filing fees are included as costs.

1.6. ART. 103.008 DOES NOT APPLY TO CORPORATE SURETIES IN BOND FORFEITURE CASES.

Art. 103.008 has been in effect since 1985, in its current codification, and has never been used in bond forfeiture costs litigation. *See* [CR 131-133] Westlaw Notes on Decisions for art. 103.008. Had the Legislature meant for sureties to be included in this provision, they would have added the words "or surety" as it did for Tex. Code Crim. Proc. Ann. art. 32.01 when it was amended so sureties could use art. 32.01 in order to discharge a bond in a case where the defendant's case was untimely indicted.

> Art. 32.01. DEFENDANT IN CUSTODY AND NO INDICTMENT PRESENTED. (a) When a defendant has been detained in custody or held to bail for the defendant's appearance to answer any criminal accusation, the prosecution, unless otherwise ordered by the court, for good cause shown, supported by affidavit, shall be dismissed and the *bail discharged*, if indictment or information be not presented against the defendant on or before the last day of the next term of the court which is held after the defendant's commitment or admission to bail or on or before the 180th day after the date of commitment or admission to bail, whichever date is later.
>
> **(b) A surety may file a motion under Subsection (a) for the purpose of discharging the defendant's bail only.**

Tex. Code Crim. Proc. Ann. art. 32.01(emphasis added)

This provision was only applicable to the criminal defendant until the Legislature amended it to add subsection (b) in order to allow a surety to file a motion pursuant to this section (amending the Sep. 1, 2005- Aug. 31, 2015 version). *Id.* The amended law even refers to the surety and defendant

separately. *Id.* This is exactly what we face in examining art. 103.008. Until the Legislature amends it to allow a corporate surety to utilize the provision, it must only apply to criminal defendants (not civil defendants). When the issue arose concerning the use of art. 32.01 the Legislature and courts did not step in and cite the non-analogous appellate provisions to hold that art. 32.01 applied to sureties as written because they were defendants as defined in Chapter 22. The Legislature acted to amend the law.

The appellate court stated in *Cont'l Heritage* that "in enacting article 103.008, the legislature was *presumably* aware of the caselaw specifying that costs are a collateral matter to a judgment …" and " this may explain why the legislature left open the possibility that the bonding party, as an obligor under the judgment, could be a "defendant" entitled to seek a correction of costs within one year of the final judgment." *Cont'l Heritage*, 2022 WL 17038175, at *11 (emphasis added). But there is not an inkling of proof for such a speculative theory made up just to support the ruling. And by studying previous legislation, it is clear this is the opposite of reality. When needed, the Legislature knows how to amend current statutes and even if the text of art. 103.008 was not amended they would have amended art. 22.10 to reference art. 103.008 but of course they did not because they never intended this convoluted application. That ruling must be overturned.

This leap may be the biggest error in the *Cont'l Heritage* case. There is no legal support for this position other than that is what the court wanted to rule. The history of art. 103.008 demonstrates it has never been used for this purpose. There is no previous usage because common sense made it clear it was for criminal defendants to challenge costs in criminal cases. The costs along with the judgment must be paid if a motion for new trial is not filed or the judgment is superseded. Art. 103.008 makes no reference to this legality.

After all, a year to challenge costs means nothing in the grand scheme of the criminal justice system for a convicted defendant serving a lengthy sentence. The defendant may not even get the bill of costs until long after he has arrived at the location where he will be serving his sentence. This inflation of time is clearly out of place for a bond forfeiture case governed by the civil rules but makes perfect sense when analyzed with the rest of Chapter 103 for the criminal defendant. And a defendant's challenge to criminal costs has no effect on the finality of his sentence because no one cares if the costs are corrected a year later as long as the defendant is serving his sentence and there are no costs if the defendant is acquitted.

It would have made more sense to apply art. 32.01 to a bondsman as a defendant because at the time there was no other recourse to discharge a bond for an untimely indictment. This court should reverse the appellate

court's holding and bring back some consistency to how the statutes are to be applied. Because *Kubosh* did not construe art. 103.008, the plain meaning must apply to that statute as well and it is only applicable to criminal defendants to correct errors in costs. "The plain meaning of a statute is determined by construing the literal text of the statute according to the rules of grammar and common usage and presuming every word was meant to serve a discrete purpose that should be given effect." *Baird*, 398 S.W.3d at 228. The Legislature knew what it was doing when it wrote art. 103.008 and there is no authority that leads any reasonable person to believe it was ever meant to be used by a bondsman.

The surrounding code provisions also make it clear that Tex. Code Crim. Proc., Chapter 103, applies only to criminal defendants. There is no exception to art. 22.10 stated nor any mention of bondsmen or sureties in the entire chapter. There is no other authority that relates art. 103.008 or Chapter 103, to a surety and the bondsman has other remedies.

1.7. ART. 103.008 DOES NOT APPLY TO THE BILL OF COSTS IN A BOND FORFEITURE CASE.

Appellant seeks to correct civil filing fees charged as civil costs of court under Tex. Code Crim. Proc., art. 103.008. However, Tex. Code Crim. Proc. Ann., art. 22.10 specifically states "...except as otherwise provided by

this chapter...the proceedings had therein shall be governed by the same rules governing other civil suits." *Id.* Art. 103.008 neither falls under Tex. Code Crim. Proc. Chapter 22 nor the civil rules of procedure. The rules governing bills of costs in civil cases do not allow for a hearing after final judgment to challenge the Clerk's authority to assess costs. *See, e.g.,* Tex. R. Civ. P. 129-149. Further, Chapter 22 does not adopt the application of the criminal rules, outside of art 22.10, to bond forfeitures. For example, art. 22.14, provides:

> When, upon a trial of the issues presented, no sufficient cause is shown for the failure of the principal to appear, the judgment shall be made final against him and his sureties, if any, for the amount in which they are respectively bound; and the same shall be collected by execution **as in civil actions.** Separate executions shall issue against each party for the amount adjudged against him. The costs shall be equally divided between the sureties, if there be more than one.

Tex. Code Crim. Proc. Ann. art. 22.14 (emphasis added).

The First Court of Appeals generally indicated that Kubosh, et. al, could challenge costs assessed in a bond forfeiture judgment through a motion to correct *or* retax costs under art. 103.008. There was no indication Harris County objected to the application of 103.008 or any analysis of how 103.008 even applied when it does not fall under Chapter 22 or the civil rules. *But see Kubosh v. Harris County*, 416 S.W.3d 483 (Tex. App. – Houston [1st

Dist.] 2013). After reviewing both Appellant's and Appellee's briefs in *Kubosh*, it is clear that neither side utilized nor objected to art. 103.008 and neither side attempted to analyze it for the Court. *See* 2012 WL 8747389 (Tex. App.—Houston [1st Dist.] Appellate Brief) and Appellant's Brief; *Kubosh v. Harris County*, 416 S.W.3d 483 (Tex. App.—Houston [1st Dist.] 2013, pet. denied)(Appellate Brief)(01-12-00214-CV). The statutory language clearly requires the application of the civil rules unless governed by another provision in Chapter 22.[4] That brief mention of art. 103.008 is not part of the holding in *Kubosh*. *Kubosh* is about duress and due process.

If this Court construes this provision to apply to sureties, it would create a two-tier procedure for challenging costs that are independent of each other. Appellant could use the civil rules and file a motion to retax costs along with a motion for new trial or a declaratory judgment action. Then after those have run their course, they would have another avenue, as long as one year had not elapsed from the judgment date, in order to make another challenge. That would seemingly make a bond forfeiture judgment with costs awarded a zombie that never dies nor can be effectively killed by the State but by repeated blows to the head. This scenario is better left for

[4] Because art. 103.008 was not used previously bond forfeiture litigation it had never been challenged nor analyzed until *Cont'l Heritage* as it was not relied upon in *Ranger*.

B-horror movies as this result could not have been intended by the Legislature.

1.8. THE CLEAR LANGUAGE OF ART. 22.10.

Texas Code of Criminal Procedure art. 22.10, provides:

> When a forfeiture has been declared upon a bond, the court or clerk shall docket the case upon the scire facias or upon the civil docket, in the name of the State of Texas, as plaintiff, and the principal and his sureties, if any, as defendants; and, except as otherwise provided by this chapter, the proceedings had therein shall be governed by the same rules governing other civil suits.

In construing a statute, "...a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy." Tex. Gov't Code § 312.005. In discerning legislative intent:

1. an unambiguous statute is interpreted according to the plain meaning of the words contained in the statute, *see Id.* at § 312.002(a); *see TGS-NOPEC Geophysical Co. v. Combs,* 340 S.W.3d 432, 439 (Tex. 2011); *State ex rel. State Dep't of Highways & Pub. Transp. v. Gonzalez,* 82 S. W .3d 322, 327 (Tex. 2000); *Fitzgerald v. Advanced Spine Fixation Sys., Inc.,* 996 S.W.2d 864, 865 (Tex. 1999);

2. words are ... given their ordinary meaning," *see TGS-NOPEC,* 340 S.W.3d at 439; *Gonzalez,* 82 S.W.3d at 327; *Fitzgerald,* 996 S.W.2d at 865;

3. the court "presume[s] the Legislature included each word in the statute for a purpose," *see Eddins-Walcher Butane Co. v. Calvert,* 156 Tex. 587, 298 S.W.2d 93, 96 (1957); and

4. the court presumes "that words not included were purposefully omitted," *see Cameron v. Terrell & Garrett, Inc.,* 618 S. W .2d 535, 540 (Tex. 1981).

In other words, "[w]here text is clear, text is determinative of...[legislative] intent." *Entergy Gulf States, Inc. v. Summers,* 282 S.W.3d 433, 437 (Tex. 2009) (op. on reh'g); *see Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson,* 209 S.W.3d 644, 651-52 (Tex. 2006); *State v. Shumake,* 199 S.W.3d 279, 284 (Tex. 2006) ("...when possible, we discern [legislative intent] from the plain meaning of the words chosen."). The text of art. 22.10 could not be clearer, "except as otherwise provided by this chapter, the proceedings had therein shall be governed by the same rules governing other civil suits."

Section 311.016 of the Texas Code Construction Act expressly provides that "unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute," use of the word "shall" in a statute "imposes a duty." Tex. Gov't Code § 311.016(2).

Appellant does not contend that art. 22.10 is ambiguous, which it is not. Rather, it argues that there is a conflict, but cites to no specific provision that conflicts with the imposition of the civil court costs at issue in this matter. Appellant, in essence, generally argues that the statute does not mean

what it says it means, and that it should be read to exclude the application of certain civil court costs. However, if that were the case, the statute would read as follows:

> When a forfeiture has been declared upon a bond, the court or clerk shall docket the case upon the scire facias or upon the civil docket, in the name of the State of Texas, as plaintiff, and the principal and his sureties, if any, as defendants; and, except as otherwise provided by this chapter, the proceedings had therein shall be governed by the same rules governing other civil suits, *except for the imposition of the following civil court costs...*

Had the Texas Legislature intended to exclude the application of civil court costs, **in whole or in part**, in bond forfeiture cases after the entry of judgment nisi, it certainly could have done so. *Id.* at § 311.016(1). But, it did not. In fact, by the statement in art. 22.10 "except as otherwise provided by this chapter," the Legislature specified when it wanted Chapter 22 provisions to apply over the rules governing civil suits. Tex. Code Crim. Proc., Chapter 22 makes no mention of art. 103.008. *Id.* Art. 22.10 states the civil rules apply and the civil rules state that filing fees are included in civil costs of court and *Dees*, as well as *Safety Nat'l* and *Ranger*, states civil costs may be assessed.

1.9. THE MOTION TO RETAX COSTS IN RANGER WAS NOT BASED ON ART. 103.008.

After reviewing both Appellant and Appellee briefs in *Ranger*, it is obvious that art. 103.008 was not utilized or briefed to the trial court or Fifth Court of Appeals by either party nor referred to in the ruling. State's

(Appellee's) Brief, 2009 WL 2565843 (Tex. App.—Dallas 2010)(Appellate Brief); Appellant's Brief, *Ranger Ins. Co. v. State*, 312 S.W.3d 266 (Tex. App.—Dallas 2010, pet. ref'd, untimely filed)(Appellate Brief)(05-08-01680-CV).[5] Appellant states the *Ranger* opinion does not indicate whether Ranger Ins. Co. brought its motion to retax under art. 103.008 which is misleading as it refuses to concede this point. [Appellant's Brief 21], [Pet. Brief 24] Also, the opinion itself makes it clear as motion to retax costs is *not* a motion to correct costs pursuant to art. 103.008 and everyone knows it. *Ranger*, 312 S.W.3d at 267.

1.10. COSTS OF COURT ARE POLITICAL IN NATURE AND MUST BE DECIDED BY THE LEGISLATURE.

The costs assessed by the District Clerk here and counties throughout the state are set by statute (amounts) but applied by rule. [CR 130]. Pursuant to these statutes, Commissioners Courts may issue orders to assess additional costs or fees. In Dallas County the costs range from $200 to $400 and fund everything from judicial retirement to courthouse security to indigent legal services. [CR 130]. However, the Legislature did repeal most of these statutes in an attempt to consolidate the complicated system. They created just two fees based on two statutes rather than the sixteen different statues that

[5] Appellee did not attach Appellant's Brief in *Ranger* as an exhibit due to the length but will make it available by request.

spawned the numerous costs and fees complained of and seven Commissioners Court orders.[6]

Only a portion of those fees remain in the county that assess them as the majority are paid to the state. A decision to end the costs that the state receives affects more than Appellant and Dallas County (which has not been joined as a party to this suit). This has statewide impact, thus should have statewide representation. Because of this impact, it must be the Texas Legislature that decides what costs the *elected District Clerks* assess and they already have. This Court should not change the status quo that has existed since *Dees*, *Safety Nat'l*, *Ranger*, and now *Cont'l Heritage* and should follow the doctrine of *stare decisis* and leave the issue to be changed in Austin if the Legislature so desires. If the Legislature wished to adopt Appellant's view and change the law, it has had ample opportunity to do so. The Legislature wholly accepts costs, filing fees or otherwise, as they are today.

1.11. COMPTROLLER'S LETTERS INSIGNIFICANT.

The Comptroller's involvement, which did not end up as Appellant hoped, only serves to strengthen the ruling in *Ranger* for everyone that received

[6] The previous table of District Clerk Fees [CR 130] has been replaced with two statutes: Tex. Loc. Gov't Code secs. 133.151 ($137) and 135.101 ($213) are now the only two fees assessed as costs. The repealed statutes previously provided the authority for the Commissioners Court to set certain costs.

their unsolicited letter and retraction. The Comptroller clearly states in its letter that it was wrong when it issued the first letter, which was not binding on anyone, stating that civil filing fees were wrong. [CR 33, 100, 134] Further, there is no confusion, uncertainty, or muddle as Appellant states [CR 33], [Pet. Brief 18] but what Appellant has created. The Comptroller's letter admits that it simply did not conduct the proper research before issuing the first letter. [CR 33, 100, 134]

As for the so-called current challenges to *Ranger*, there are none but the cases that Appellant, through its agent, filed. The letter would have been more instructive if the author *revealed* the source of its involvement in this matter, to include interactions/communications with either party of this appeal (surely the Comptroller's office did not decide out of the blue to attempt to interject itself into bond forfeiture cases) and provided proper references to the "recent challenges" so all interested parties could follow. It has been more than two and a half years since that letter was published and no other challenges have surfaced but those which Appellant filed. The letter is misleading at best and deceptive at worst. Appellant's reliance on the Comptroller's involvement does not bolster its argument an iota. It does demonstrate that the involvement without explanation is clear proof that this issue is political.

REPLY POINT NO. 2: THE COURT CORRECTLY RULED THAT RANGER WAS STILL GOOD LAW AND CIVIL COSTS APPLIED IN BOND FORFEITURE CASES.

INTRODUCTION.

Appellant asked the Fifth Court of Appeals and now this Court to overrule *Ranger*, the prevailing law of the land, and essentially *Dees*, even though its motion presents no facts different than what was presented in *Ranger*, but for the attempt of the use of art. 103.008.

However, *Ranger* is neither wrongly decided nor unworkable as it has worked well for more than a decade. Appellant just does not like the ruling and knows it cannot change it so it wants to change the rules. If this were the case any party that was hurt by a precedent could easily challenge that case on appeal and claim that it was wrongly decided, toss a cite from *Ex parte Thomas* [Pet. Br. 35] in there and cry foul, erroneous, misapplied, and misconstrued and any other adjectives it chooses. But what makes it more absurd is that the losing party of the reversal could, with Appellant's reasoning, do the same and argue for a return to the old precedent. The law forbids an absurd result.

Appellant conveniently has an excuse or "exception" to everything contrary to what it wants this Court's ruling to be. It states *Ranger* was wrongly decided; *Ranger* misapplied precedent [Appellant's Brief 29], [Pet. Brief 35];

Ranger misconstrued *Dees*, [Appellant's Brief 33], [Pet. Brief 45, 47], the briefing was really sloppy [RR 10], *Ranger* conflicts with a higher court [RR 10], [Pet. Brief 19], art. 22.10 does not mean what it says, and the Comptroller of the Currency is confused by *Ranger* [Appellant's Brief 14], [Pet. Brief 18] and it caused uncertainty. [CR 33]. However, only Appellant's reference to the Comptroller of the Currency may be confusing to all involved.[7] It must be hard for this Court to imagine how the *Ranger* case was ever published among all of the errors Appellant claims.

Nonetheless, *Ranger* goes on to correctly interpret and apply *Dees* and *Safety Nat'l* and remains good law in light of *Cont'l Heritage*. Civil costs, filing fees included, apply no matter how the motion to retax or correct is raised.

2.1. THE HISTORY OF COURT COSTS IN BOND FORFEITURE CASES.

The issue of civil-court costs being assessed in bond forfeiture cases is well settled in Texas. In 1993, Dallas County bondsman Eddie Dees challenged the assessment of costs in bond forfeiture cases in Dallas County and the Court of Criminal Appeals held that "civil court costs may be assessed in a bail bond forfeiture proceeding after entry of the judgment nisi." *Dees v.*

[7]Appellant avoids using the proper title, Comptroller of Public Accounts, for an unknown reason.

State, 865 S.W.2d 461, 462 (Tex. Crim. App. 1993). This holding was based on the rationale that "[a] bail bond forfeiture proceeding is a criminal law matter governed by the rules of civil procedure after entry of the judgment nisi." *Id.* The Court of Criminal Appeals also determined that "interest on the bond on the bond amount after forfeiture" could also be assessed. *Id.* at 463. There was no distinguishing of costs in *Dees* because the Court knew that civil filing fees were civil costs. Tex. R. Civ. P. 145(a). It did not have to be articulated.

In 2010, the Court held that civil filing fee statutes do not apply in bond forfeiture cases on appeal. *Safety Nat'l Cas. Corp. v. State*, 305 S.W.3d 586, 587 (Tex. Crim. App. 2010). This was based upon the fee statute in effect in 1876. The court said that the statute "clearly excluded the application of civil-case fees in criminal cases heard by the Court of Appeals." *Id.* at 590. However, the Court also noted that, because of the differences in trial court civil fee statutes in effect after 1879, it had not erred in reaching the conclusion in *Dees* that civil court costs may be assessed in bond forfeiture proceedings "at the trial-court level". *Id.* The Court also specified that the issue of the imposition of civil "filing fees" in the trial court was beyond the scope of the case. *Id.* at 588. A short time later in 2010, the Dallas Court of Appeals confronted that issue and concluded that the trial-court did not err in denying the surety's motion to retax costs "to the extent it complained about the assessment of

civil filing fees" in a bail bond forfeiture proceeding after entry of the judgment nisi. *Ranger Ins. Co. v. State*, 312 S.W.2d 266, 270 (Tex. App. - Dallas 2010, pet. dism'd as untimely filed). The Fifth Court of Appeals repeated the Court of Criminal Appeals holding in the *Dees* cases and then reminded Ranger that "an intermediate court of appeals . . . are (sic) bound by the precedent set by the Texas Court of Criminal Appeals." *Ranger Ins. Co.*, 312 S.W.3d at 268-69. The Court then emphasized, "[t]he court of criminal appeals (sic) has spoken on the question of whether civil filing fees are applicable in bond forfeiture proceedings." *Id.* The Fifth Court of Appeals then followed the holdings of *Dees* and *Safety National* regarding the application of civil-case court costs stating, "we must follow that precedent." *Id.* (emphasis added). The assessment of civil-court costs and fees at the trial level in bail bond forfeiture cases remains the law in Texas. *Id.* As of the date of this writing, the Dallas court's opinion in *Ranger* is the most recent authority addressing the issue and its holding was upheld in *Cont'l Heritage,* the case before us today. Other than the use of art. 103.008, *Cont'l Heritage* changed nothing regarding civil filing fees at the trial court level. Civil costs have always included civil filing fees by common usage, by common sense, and by rule. The one thing a party wins if awarded costs, besides the case, is its filing fee. And that applies from the People's Court to highest court in the land.

2.2. THE *RANGER* CASE REMAINS THE LAW.

Ranger and now *Cont'l Heritage* in part (the civil filing fees holding), were not wrongly decided. The *Ranger* court examined *Dees* and *Safety Nat'l* and held that art. 44.44 does not authorize civil appellate filing fees because those fees were not allowed in bond forfeiture cases when the original predecessor to art. 44.44 was enacted. However, Art. 22.10 *does* allow civil filing fees because those fees were allowed when the original Art. 22.10 was enacted. The court correctly ruled in *Cont'l Heritage* that civil filing fees are applicable to bond forfeiture cases as costs.

The *Ranger* court (and *Cont'l Heritage* court) were able to analyze this correctly without going the next step further to outline that the civil rules as applied by art. 22.10 further define what are considered costs of court. Because civil filing fees were allowed when the original art. 22.10 was enacted there was no need to make a distinction at this point because the civil rules state that costs include filing fees. *See* Tex. R. Civ. P. 145(a). *Dees* already held that civil costs applied to bond forfeiture cases.

Safety Nat'l reaffirms *Dees* and the lack of legislative history barring the imposition of civil court fees after entry of judgment *nisi. See Safety Nat'l,* 305 S.W.3d at 588-90. In *Safety Nat'l,* the Court of Criminal Appeals based its conclusion regarding civil appellate filing fees based on the legislative history.

As to the non-appellate civil court fees legislative history, *Safety Nat'l* specifically noted:

> ...at this juncture, we cannot say that our determination conflicts with our 1993 decision in *Dees v. State*. In that case, we interpreted Article 22.10, Texas Code of Criminal Procedure, which is part of Chapter 22, regulating bond-forfeiture proceedings in the trial court. That provision contains the same proviso as Article 44.44... Construing the plain text, we held that at the trial-court level, civil court costs may be assessed in bond forfeiture proceedings after the entry of a judgment nisi. An examination of trial-court fee-schedule statutes in effect in 1879, when Article 22.10 was enacted, shows that we did not err in reaching this conclusion. Unlike the 1876 Supreme Court fee-schedule statute, **the trial-court civil fee statutes, in effect after 1879 do not contain any provision restricting their application to civil cases.**

Id. at 590 (emphasis added).

Thus, *Safety Nat'l* makes it clear that art 22.10 civil court fees are not restricted per its review of the legislative history, unlike the appellate civil fees. Notably, the Court of Criminal Appeals makes no mention of any conflict with art. 22.10 that would bar the imposition of the civil court fees. As such, *Dees, Ranger Ins.,* and *Safety Nat'l* all support that civil court costs can be assessed in bond forfeiture proceedings after the entry of a judgment nisi, which supports Appellee's arguments. The only item missing is the definition applied to costs of court by the civil rules and that has been stated as "any fee charged by the court or an officer of the court including but not

limited to, **filing fees**, …" Tex. R. Civ. P. 145(a) (emphasis added). But the Court knew this and did not need to write further.

It is not that *Ranger* (and now *Cont'l Heritage*) is the *just* law of the land but that *Ranger* is the last case to properly examine *Dees*, *Safety Nat'l*, art. 44.44 and art. 22.10 and found no conflict preventing the fees in question. *See generally*, *Ranger Ins. Co. v. State*, 312 S.W.2d 266 (Tex. App. - Dallas 2010, pet. dism'd as untimely filed). The analysis in *Ranger* is apart from, but no less supportive of, the definition that the civil rules provide for costs of court and also define the civil filing fees as costs of court. Tex. R. Civ. P. 145(a). The analysis was complete and there is no legal reason for this Court to alter the holding in *Ranger* and *Cont'l Heritage* did not.

2.3. SURETY'S LACK OF CONTRARY AUTHORITY.

The opinion in Op. Tex. Att'y Gen. No. GA-0486 conflicts with the binding precedent in *Dees*, and it was rejected by the First Court of Appeals in their supplemental opinion. *Safety Nat'l Casualty Corp. v. State*, 273 S.W.3d 730 (Tex. App.—Houston [1st Dist.] 2008, pet. Struck). Other than its own self-serving opinion, this Attorney General Opinion is the only authority that supports appellant's entire argument.

The *Safety Nat'l* and *Ranger* opinions were subsequent to the Attorney General opinion GA-0486 in 2006 and they overrule it by implication; it has not been a factor in this litigation. When addressing whether the Attorney General opinion was relevant, the Court of Criminal Appeals "then rejected Safety National's reliance on an advisory opinion rendered by the Attorney General" (*Safety Nat. Cas. Corp. v. State*, 305 S.W.3d 586, 587 (Tex. Crim. App. 2010)), and the GA-0486 opinion was largely ignored by the Houston Court of Appeals as it was by the Fifth Court of Appeals in *Ranger*. The *Ranger* opinion states civil filing fees are applicable in bond forfeiture proceedings. *Ranger Ins. Co.*, 312 S.W.3d at 268-69. Furthermore, Attorney General opinions are not binding on courts. *Holmes v. Morales*, 924 S.W.2d 920, 924 (Tex. 1996)(emphasis added). Their argument and motion continue to rely on this opinion issued prior to *Safety Nat'l* and *Ranger* because all other authority support the State's position and has been the law since 2010. The Fifth Court of Appeals was not fooled on this issue.

The Fifth Court of Appeals then followed the holdings of *Dees* and *Safety Nat'l* regarding the application of civil-case court costs stating, "we must follow that precedent." *Ranger Ins. Co.*, 312 S.W.3d at 268-69 (emphasis added). The assessment of civil-court costs and fees at the trial level in bail

bond forfeiture cases remains the law in Texas. *Id.*; *Cont'l Heritage*, 2022 WL 17038175, at *7, 16; *Cont'l Heritage*, 2022 WL 17038175, Order En Banc Denying Reconsideration.

2.4. CIVIL FILING FEES AT THE TRIAL COURT LEVEL.

Appellee adopts Justice Murphy's opinion in *Ranger* :

> Although the issue of whether civil filing fees at the trial court level may be imposed in bond forfeiture cases was beyond the scope of *Safety National*, the court of criminal appeals emphasized that its determination did not conflict with its prior decision in *Dees*. *Id.* at 588–91. The court explained that although both article 44.44 and article 22.10 contain language stating the civil rules govern bond forfeiture cases, the trial court fee statutes in effect at the time article 22.10 was enacted "do not contain any provision restricting their application to civil cases." *Id.* at 590. Thus, the court added it "did not err" in reaching the conclusion in *Dees* that civil court costs may be assessed in bond forfeiture cases after the entry of the judgment nisi. *Id.*

Ranger Ins. Co., 312 S.W.3d at 269.

Simply put, *Ranger* does not conflict with *Dees* because civil costs apply. (No one argues this). *Safety Nat'l* does not conflict with *Dees* because it only addresses appellate fees and going back to *Dees* there is only **one** cost left not to conflict with and those are civil filing fees. Civil filing fees are identified as costs under the civil rules but even if they were not, *Dees*, *Safety Nat'l*, *Ranger* and now *Cont'l Heritage* says they can be assessed and must be paid.

This issue has been decided more than once and *Ranger*, explaining *Dees* and *Safety Nat'l*, took the cases and statutes into consideration in its decision. It was not the fault of deficient or faulty briefing [Appellant's Brief 39, 41], [Pet. Brief 56] that carried the day in *Ranger*, it was the legal analysis of the *Ranger* court that prevailed. *Ranger* could have bolstered its opinion by exploring the civil rules and definition of civil court costs, but it was not needed. If Appellant wants to avoid paying the costs of court in the bond forfeiture cases it should develop a better business plan which ensures the defendants on bond actually make it to court to avoid the forfeiture to begin with. This is what the case should be about, getting defendants to court, not tired arguments attempting to distinguish fees from costs to shirk liability caused by the bondsman.

2.5. NO DISTINCTION ON WHEN COSTS ARE IMPOSED OR COLLECTED.

Appellant tries to distinguish filing fees from costs based on when they are "imposed and collected." [CR 34] But even if the Clerk does not collect filing fees upon the filing of the judgment nisi, the court is expressly authorized to include any "fees due" as part of the costs in the judgment. Tex. Civ. Prac. & Rem Code § 31.007(b)(1). There are only two types of costs; civil or criminal. Trying to rename or redefine costs as "revenue

generating" [Pet. Brief 31, 36] is self-serving and only exists to confuse in a weak attempt to persuade and was introduced by PBT's amicus brief in *Safety Nat'l*. It is not the law nor rule nor any official definition as compared to how filing fees defined as costs pursuant to Tex. R. Civ. P. 145 (a).

2.6. THE JUDGMENT NISI AND CITATION ARE THE STATE'S PETITION IN A BOND FORFEITURE CASE.

If the question is whether a suit is filed in a bond forfeiture case, for filing fee purposes, it is answered in the affirmative. It may not be filed in the sense Appellant wants it to be filed in order to make use of the "upon the filing of a civil suit" argument [CR 34], [Appellant's Brief 23] [Pet. Brief 26, 45] but it does not get to choose how a case is considered filed. Once the judgment nisi is filed the case is governed by the civil rules, which include all civil costs. Tex. Code Crim. Proc. Ann., art. 22.10. Filing fees are included in civil costs. Tex. R. Civ. P. 145(a).

The judgment nisi is filed in this case and every other bond forfeiture case. [CR 8]. The citation provided by statute constitutes the State's pleadings in a bond forfeiture case. *See Blue v. State*, 170 Tex. Crim. 449 (1960); *Nichols v. State*, 158 Tex. Crim. 367 (1952); *Polluck v. State*, 299 S.W.2d 294 ; *Bonds v. State*, 286 S.W.2d 313 (1955). The citation includes the bond,

judgment nisi and power of attorney. Tex. Code Crim. Proc. Ann. art. 22.04. Like an indictment or civil petition, variances in the pleading can be fatal to the State's case. Civil discovery, summary judgments, jury trials and final judgments are all a part of the bond forfeiture case. And all of these are separate and apart from the underlying criminal case and governed by the civil rules. The code even provides special rules for serving the absconding defendant. Tex. Code Crim. Proc. Ann. art. 22.05. Although it is clear the bond forfeiture is a criminal case, there is no justification that it is not a new case. That new case incurs costs. Those costs are incurred whether the case is docketed upon the scire facias or the civil docket.

There is more than one way to "file" the state's petition in a bond forfeiture case other than the antiquated "walking over to the counter and handing the clerk a stack of papers to stamp." The judgment nisi and citation have been electronically filed in Dallas County for years. Just because Dallas County's outdated computer system does not provide a separate cause number for bond forfeiture cases, it makes no difference in their filing. Appellant must pay all the civil costs of court that are incurred due to the filing of the bond forfeiture, its administration, and litigation, just as any other civil suit. *Ranger Ins. Co.*, 312 S.W.3d at 269.

CONCLUSION

"Costs of court" is a set of fees and costs which includes filing fees among its members. To argue filing fees are not costs is to argue that apples are not fruit or a dog is not a pet. If appellant desires a different interpretation of art. 22.10 or any of the civil rules or statutes that authorize the costs it complains of, it should write its representative. The Court should follow the clear language of art. 22.10 and common law precedent. Bond forfeiture cases are governed by the civil rules and there is no exception in Chapter 22 to use art. 103.008 in lieu of a motion for new trial/retax costs or a declaratory judgment action in the proceedings. Art. 103.008 serves to correct criminal costs, not civil filing fees. Art. 103.008 serves to correct criminal costs not civil costs. Art. 22.10 and Chapter 22 of the Texas Code of Criminal Procedure clearly state that the civil rules apply to bond forfeiture cases and civil rules state that civil fling fees are included in civil costs of court.

Ranger was rightly decided and any reading of the cases clearly demonstrate this. The real reason bondsmen must pay all the court costs on bond forfeiture cases is because *they* failed to get the defendants to court, not the *Ranger* court's supposed misapplication of the law. But regardless, how motions to correct costs or retax costs or challenge costs are raised, it has been decided and there is no reason to revisit it because of a bondsman does not

want to pay its share. The court was clear in its holding, and it has not been an issue since it was decided in 2010, despite empty claims to the contrary.

Besides *stare decisis*, there is also the issue of just making good legal sense. Consider that each bond forfeiture case settled or tried in Dallas County in the past decade has begun with a clerk filing the judgment nisi, then another clerk preparing and issuing citation via certified mail or constable/sheriff and then another clerk processing the answer and setting the case on the docket. Subsequently, each settlement or judgment occurred in a court, in a building with security, with a judge or two, a bailiff, a court reporter, and this case has even spawned an indirect appeal and petition for discretionary review. Then each case must be documented, indexed, and stored by a clerk after judgment in addition to assessing, processing, and accounting for payments made. Each action is performed on the county's electronic system which requires maintenance and training. Each of these actions in the bond forfeiture case incur costs that Appellant feels someone else should pay. Bondsmen are not immune to the costs of the courts' operation just so they can have more profit amid the current bond reform sweeping the state.

The place to complain about this is with those that make the laws and set the costs; the Texas Legislature.

PRAYER

The State prays that this Honorable Court reverse the Appellate Court and hold that art. 103.008 does not only apply to a bondsman/surety or to correct civil costs assessed in bond forfeiture cases and affirm the Appellate Court's holding that Ranger remains good law and for any other relief to which it is entitled.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this document contains 9,138 words, according to Microsoft Word 2016, exclusive of the sections excepted by Tex. R. App. P. 9.4(i)(1).

/s/David Villafuerte

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing brief was served on Niles Illich, attorney for Appellant, Continental Heritage, on April 21, 2023, by electronic service to Niles@spalmerlaw.com.

/s/David Villafuerte

APPENDIX FOR APPELLEE'S BRIEF

INDEX OF EXHIBITS

A- STATUTES CITED IN BRIEF

Tex. Civ. Prac. & Rem. Code § 31.007

Sec. 31.007. PARTIES RESPONSIBLE FOR ACCOUNTING OF OWN COSTS. (a) Each party to a suit shall be responsible for accurately recording all costs and fees incurred during the course of a lawsuit, if the judgment is to provide for the adjudication of such costs. If the judgment provides that costs are to be borne by the party by whom such costs were incurred, it shall not be necessary for any of the parties to present a record of court costs to the court in connection with the entry of a judgment.

(b) A judge of any court may include in any order or judgment all costs, including the following:

(1) fees of the clerk and service fees due the county;

(2) fees of the court reporter for the original of stenographic transcripts necessarily obtained for use in the suit;

(3) masters, interpreters, and guardians ad litem appointed pursuant to these rules and state statutes; and

(4) such other costs and fees as may be permitted by these rules and state statutes.

Added by Acts 1987, 70th Leg., ch. 663, Sec. 3, eff. Sept. 1, 1987.

Tex. Code Crim. Pro. art. 22.04

REQUISITES OF CITATION. A citation shall be sufficient if it be in the form provided for citations in civil cases in such court; provided, however, that a copy of the judgment of forfeiture entered by the court, a copy of the forfeited bond, and a copy of any power of attorney attached to the forfeited bond shall be attached to the citation and the citation shall notify the parties cited to appear and show cause why the judgment of forfeiture should not be made final.

Acts 1965, 59th Leg., p. 317, ch. 722, Sec. 1, eff. Jan. 1, 1966.
Amended by:

Acts 2005, 79th Leg., Ch. 743 (H.B. 2767), Sec. 4, eff. September 1, 2005.

Tex. Code Crim. Pro. art. 22.05

CITATION AS IN CIVIL ACTIONS. If service of citation is not waived under Article 22.03, a surety is entitled to notice by service of citation, the length of time and in the manner required in civil actions; and the officer executing the

citation shall return the same as in civil actions. It shall not be necessary to give notice to the defendant unless he has furnished his address on the bond, in which event notice to the defendant shall be deposited in the United States mail directed to the defendant at the address shown on the bond or the last known address of the defendant.

Acts 1965, 59th Leg., p. 317, ch. 722, Sec. 1, eff. Jan. 1, 1966.
Amended by:

Acts 2005, 79th Leg., Ch. 743 (H.B. 2767), Sec. 5, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 657 (H.B. 1158), Sec. 3, eff. Sep. 1, 2007.

Tex. Code Crim. Pro. art. 22.10

SCIRE FACIAS DOCKET. When a forfeiture has been declared upon a bond, the court or clerk shall docket the case upon the scire facias or upon the civil docket, in the name of the State of Texas, as plaintiff, and the principal and his sureties, if any, as defendants; and, except as otherwise provided by this chapter, the proceedings had therein shall be governed by the same rules governing other civil suits.

Acts 1965, 59th Leg., p. 317, ch. 722, Sec. 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 886, ch. 312, Sec. 3, eff. Aug. 31, 1981.

Tex. Code Crim. Pro. art. 22.125

POWERS OF THE COURT. After a judicial declaration of forfeiture is entered, the court may proceed with the trial required by Article 22.14 of this code. The court may exonerate the defendant and his sureties, if any, from liability on the forfeiture, remit the amount of the forfeiture, or set aside the forfeiture only as expressly provided by this chapter. The court may approve any proposed settlement of the liability on the forfeiture that is agreed to by the state and by the defendant or the defendant's sureties, if any.

Acts 1981, 67th Leg., p. 886, ch. 312, Sec. 4, eff. Aug. 31, 1981. Renumbered from art. 22.12a by Acts 1987, 70th Leg., ch. 167, Sec. 5.02(1), eff. Sept. 1, 1987.

Tex. Code Crim. Pro. art. 22.13

CAUSES WHICH WILL EXONERATE. (a) The following causes, and no other, will exonerate the defendant and his sureties, if any, from liability upon the forfeiture taken:

1. That the bond is, for any cause, not a valid and binding undertaking in law. If it be valid and binding as to the principal, and one or more of his sureties, if any, they shall not be exonerated from liability because of its being invalid and not binding as to another surety or sureties, if any. If it be invalid and not binding as to the principal, each of the sureties, if any, shall be exonerated from liability. If it be valid and binding as to the principal, but not so as to the sureties, if any, the principal shall not be exonerated, but the sureties, if any, shall be.

2. The death of the principal before the forfeiture was taken.

3. The sickness of the principal or some uncontrollable circumstance which prevented his appearance at court, and it must, in every such case, be shown that his failure to appear arose from no fault on his part. The causes mentioned in this subdivision shall not be deemed sufficient to exonerate the principal and his sureties, if any, unless such principal appear before final judgment on the bond to answer the accusation against him, or show sufficient cause for not so appearing.

4. Failure to present an indictment or information at the first term of the court which may be held after the principal has been admitted to bail, in case where the party was bound over before indictment or information, and the prosecution has not been continued by order of the court.

5. The incarceration of the principal in any jurisdiction in the United States:
(A) in the case of a misdemeanor, at the time of or not later than the 180th day after the date of the principal's failure to appear in court; or
(B) in the case of a felony, at the time of or not later than the 270th day after the date of the principal's failure to appear in court.

(b) A surety exonerated under Subdivision 5, Subsection (a), remains obligated to pay costs of court, any reasonable and necessary costs incurred by a county to secure the return of the principal, and interest accrued on the bond amount from the date of the judgment nisi to the date of the principal's incarceration.

Acts 1965, 59th Leg., p. 317, ch. 722, Sec. 1, eff. Jan. 1, 1966.

Amended by Acts 2003, 78th Leg., ch. 942, Sec. 1, eff. June 20, 2003.

Tex. Code Crim. Pro. art 22.14

JUDGMENT FINAL. When, upon a trial of the issues presented, no sufficient cause is shown for the failure of the principal to appear, the judgment shall be made final against him and his sureties, if any, for the amount in which they are respectively bound; and the same shall be collected by execution as in civil actions. Separate executions shall issue against each party for the amount adjudged against him. The costs shall be equally divided between the sureties, if there be more than one.

Acts 1965, 59th Leg., p. 317, ch. 722, Sec. 1, eff. Jan. 1, 1966.

Tex. Code Crim. Pro. art. 22.15

JUDGMENT FINAL BY DEFAULT. When the sureties have been duly cited and fail to answer, and the principal also fails to answer within the time limited for answering in other civil actions, the court shall enter judgment final by default.

Acts 1965, 59th Leg., p. 317, ch. 722, Sec. 1, eff. Jan. 1, 1966.

Tex. Code Crim. Pro. art. 22.16

REMITTITUR AFTER FORFEITURE. (a) After forfeiture of a bond and before entry of a final judgment, the court shall, on written motion, remit to the surety the amount of the bond, after deducting the costs of court and any reasonable and necessary costs to the county for the return of the principal, and the interest accrued on the bond amount as provided by Subsection (c) if the principal is released on new bail in the case or the case for which bond was given is dismissed.

(b) For other good cause shown and before the entry of a final judgment against the bond, the court in its discretion may remit to the surety all or part of the amount of the bond after deducting the costs of court and any reasonable and necessary costs to the county for the return of the principal, and the interest accrued on the bond amount as provided by Subsection (c).

(c) For the purposes of this article, interest accrues on the bond amount from the date of forfeiture in the same manner and at the same rate as provided for the accrual of prejudgment interest in civil cases.

Acts 1965, 59th Leg., p. 317, ch. 722, Sec. 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 886, ch. 312, Sec. 5, eff. Aug. 31, 1981; Acts 1987, 70th Leg., ch. 1047, Sec. 3, eff. June 20, 1987.

Amended by Acts 2003, 78th Leg., ch. 942, Sec. 2, eff. June 20, 2003.

Tex. Code Crim. Pro. art. 22.17

SPECIAL BILL OF REVIEW. (a) Not later than two years after the date a final judgment is entered in a bond forfeiture proceeding, the surety on the bond may file with the court a special bill of review. A special bill of review may include a request, on equitable grounds, that the final judgment be reformed and that all or part of the bond amount be remitted to the surety, after deducting the costs of court, any reasonable costs to the county for the return of the principal, and the interest accrued on the bond amount from the date of forfeiture. The court in its discretion may grant or deny the bill in whole or in part.

(b) For the purposes of this article, interest accrues on the bond amount from the date of:

(1) forfeiture to the date of final judgment in the same manner and at the same rate as provided for the accrual of prejudgment interest in civil cases; and

(2) final judgment to the date of the order for remittitur at the same rate as provided for the accrual of postjudgment interest in civil cases.

Acts 1987, 70th Leg., ch. 1047, Sec. 4, eff. June 20, 1987.

Tex. Code Crim. Pro. art. 32.01

DEFENDANT IN CUSTODY AND NO INDICTMENT PRESENTED. (a) When a defendant has been detained in custody or held to bail for the defendant's appearance to answer any criminal accusation, the prosecution, unless otherwise ordered by the court, for good cause shown, supported by affidavit, shall be dismissed and the bail discharged, if indictment or information be not presented against the defendant on or before the last day of the next term of the court which is held after the defendant's commitment or admission to bail or on or before the 180th day after the date of commitment or admission to bail, whichever date is later.

(b) A surety may file a motion under Subsection (a) for the purpose of discharging the defendant's bail only.

Acts 1965, 59th Leg., p. 317, ch. 722, Sec. 1, eff. Jan. 1, 1966.

Amended by Acts 1997, 75th Leg., ch. 289, Sec. 2, eff. May 26, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 743 (H.B. 2767), Sec. 6, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 152 (H.B. 643), Sec. 1, eff. September 1, 2015.

Tex. Code Crim. Pro. art. 44.02.

DEFENDANT MAY APPEAL.

A defendant in any criminal action has the right of appeal under the rules hereinafter prescribed, provided, however, before the defendant who has been convicted upon either his plea of guilty or plea of nolo contendere before the court and the court, upon the election of the defendant, assesses punishment and the punishment does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney may prosecute his appeal, he must have permission of the trial court, except on those matters which have been raised by written motion filed prior to trial. This article in no way affects appeals pursuant to Article 44.17 of this chapter.

Tex. Code Crim. Pro. art. 44.42.

APPEAL ON FORFEITURES.

An appeal may be taken by the defendant from every final judgment rendered upon a personal bond, bail bond or bond taken for the prevention or suppression of offenses, where such judgment is for twenty dollars or more, exclusive of costs, but not otherwise.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Tex. Code Crim. Pro. art. 44.44.

RULES IN FORFEITURES. In the cases provided for in the two preceding Articles, the proceeding shall be regulated by the same rules that govern civil actions where an appeal is taken or a writ of error sued out.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Tex. Code Crim. Pro. art. 103.008

CORRECTION OF COSTS. (a) On the filing of a motion by a defendant not later than one year after the date of the final disposition of a case in which costs were imposed, the court in which the case is pending or was last pending shall correct any error in the costs.

(b) The defendant must notify each person affected by the correction of costs in the same manner as notice of a similar motion is given in a civil action.

Added by Acts 1985, 69th Leg., ch. 269, Sec. 1, eff. Sept. 1, 1985.

The following article was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. 3774 and S.B. 1373, 87th Legislature, Regular Session, for amendments affecting the following section.

Acts 2019, 86th Leg., R.S., Ch. 121 (H.B. 435), Sec. 2, eff. September 1, 2019.

Tex. Gov't Code § 311.016

"MAY," "SHALL," "MUST," ETC. The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute:

(1) "May" creates discretionary authority or grants permission or a power.

(2) "Shall" imposes a duty.

(3) "Must" creates or recognizes a condition precedent.

(4) "Is entitled to" creates or recognizes a right.

(5) "May not" imposes a prohibition and is synonymous with "shall not."

(6) "Is not entitled to" negates a right.

(7) "Is not required to" negates a duty or condition precedent.

Added by Acts 1997, 75th Leg., ch. 220, Sec. 1, eff. May 23, 1997.

Tex. Gov't Code § 312.002

MEANING OF WORDS. (a) Except as provided by Subsection (b), words shall be given their ordinary meaning.

(b) If a word is connected with and used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in the particular trade, subject matter, or art.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Tex. Gov't Code § 312.005

LEGISLATIVE INTENT. In interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Tex. Loc. Gov't Code § 133.151

STATE CONSOLIDATED CIVIL FEE ON FILING A CIVIL CASE. (a) The clerk of a district court, statutory county court, statutory probate court, or county court shall collect:

(1) a fee in the amount of $137 on the filing of any civil, probate, guardianship, or mental health case; and

(2) a fee in the amount of $45 on any action other than an original action subject to Subdivision (1), including an appeal and any counterclaim, cross-action, intervention, contempt action, adverse probate action, interpleader, motion for new trial, or third-party action.

(a-1) The clerk of a justice court shall collect a fee in the amount of $21 on the filing of any civil case and on any action other than an original action for the civil case, including an appeal and any counterclaim, cross-action, intervention, contempt action, interpleader, motion for new trial, or third-party action.

(b) The fees under this section shall be collected and remitted either:

(1) directly to the treasury by the Office of Court Administration of the Texas Judicial System for fees paid using the electronic filing system established under Section 72.031, Government Code; or

(2) to the comptroller in the manner provided by Subchapter B for fees paid to an officer of a court.

(c) The comptroller shall allocate the fees received under Subsection (a)(1) to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or

fund would have received if the fees for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) the judicial fund to be used for court-related purposes for the support of the judiciary

59.854 percent;

(2) the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to an indigent

14.5985 percent;

(3) the statewide electronic filing system fund

21.8978 percent; and

(4) the judicial and court personnel training fund

3.6497 percent.

(d) The comptroller shall allocate the fees received under Subsection (a)(2) to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the fees for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic legal services to an indigent

22.2222 percent;

(2) the statewide electronic filing system fund

66.6667 percent; and

(3) the judicial and court personnel training fund

11.1111 percent.

(e) The comptroller shall allocate the fees received under Subsection (a-1) to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the fees for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to an indigent

28.5714 percent;

(2) the statewide electronic filing system fund

47.6191 percent; and

(3) the judicial and court personnel training fund

23.8095 percent.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1, 2004.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.02, eff. January 1, 2022.

Tex. Loc. Gov't Code § 135.101

LOCAL CONSOLIDATED CIVIL FEE FOR CERTAIN CIVIL CASES IN DISTRICT COURT, STATUTORY COUNTY COURT, OR COUNTY COURT. (a) A person shall pay in a district court, statutory county court, or county court in addition to all other fees and court costs a local consolidated filing fee of:

(1) $213 on filing any civil case except a probate, guardianship, or mental health case; and

(2) $35 on any action other than an original action for a case subject to Subdivision (1), including an appeal and any counterclaim, cross-action, intervention, contempt action, interpleader, motion for new trial, or third-party action.

(b) The county treasurer shall allocate the fees received under Subsection (a)(1) to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the fees for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) the appellate judicial system fund 2.3474 percent;

(2) the court facility fee fund

9.3897 percent;

(3) the clerk of the court account

23.4742 percent;

(4) the county records management and preservation account
14.0845 percent;
(5) the court reporter service fund
11.7371 percent;
(6) the county law library fund
16.4319 percent;
(7) the courthouse security fund
9.3897 percent;
(8) the language access fund
1.4085 percent;
(9) the county jury fund
4.6948 percent; and
(10) the county dispute resolution fund
7.0423 percent.

(c) The county treasurer shall allocate the fees received under Subsection (a)(2) to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the fees for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) the clerk of the court account
42.8571 percent; and
(2) the county records management and preservation account
57.1429 percent.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. Jan. 1, 2022.

Tex. R. Civ. P. 145(a)

PAYMENT OF COSTS NOT REQUIRED.

(a) Costs Defined. "Costs" mean any fee charged by the court or an officer of the court, including, but not limited to, filing fees, fees for issuance and service of process, fees for copies, fees for a court-appointed professional, and fees charged by the clerk or court reporter for preparation of the appellate record.

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